

**Damodaran Vs. Bharathan**

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**Court :** Kerala

**Decided On :** Sep-02-2003

**Reported in :** 2004CriLJ222; 2003(3)KLT976

**Judge :** Cyriac Joseph and; K. Thankappan, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

**Appeal No. :** W.P. (C) No. 19636 of 2003

**Appellant :** Damodaran

**Respondent :** Bharathan

**Advocate for Pet/Ap. :** Thomas Antony and; K.M. Jamaludheen, Advs.

**Disposition :** Writ petition dismissed

**Judgement :**

**K. Thankappan, J.**

1. This Writ Petition filed under Article 227 of the Constitution of India is against the judgment in R.C.A. No. 126 of 2000 on the file of the Rent Control Appellate Authority and Wakf Tribunal, Kozhikode. R.C.A. No. 126 of 2000 was filed against the order in I.A. No. 917 of 1999 in R.C.P. No. 29 of 1996 of the Rent Control Court, Koyilandy.

2. The petitioner- landlord filed R.C.P. No. 29 of 1996 for eviction of the respondent-tenant under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The respondent-tenant resisted the application for eviction. The petitioner/landlord produced Ext. A1, an unregistered partnership deed dated 22.2.1986 which would show that the business in the tenanted premises was being conducted by the partnership firm of which the respondent-tenant was the Managing Partner. It would also show that the respondent was one of the co-owners of the property and the petitioner had no title over the property. After trial, the Rent Control Court dismissed the petition. Against the dismissal of the petition, the landlord filed R.C.A. No. 37 of 1998 before the Rent Control Appellate Authority, Kozhikode.

3. Before the Rent Control Court, the respondent had placed reliance on Ext. B1 partnership deed to dispute the title and ownership of the landlord over the tenanted premises. It was in this context that the petitioner filed I.A. No. 917 of 1999 requesting the Rent Control Court to proceed against the respondent-tenant under Section 340 Cr.P.C. It was alleged in the application that Et. B1 partnership deed produced and relied on by the tenant was not genuine and that no such partnership deed existed and hence he committed offences punishable under Sections 465, 468 and 471 IPC. The Rent Control Court, after analysing the evidence, dismissed the application. Against the dismissal of the said I.A., the landlord filed R.C.A. No. 126 of 2000 before the Rent Control Appellate Authority which also ended in dismissal. This Writ Petition is filed against the dismissal of R.C.A. No. 126 of 2000.

4. Having heard the learned counsel appearing for the petitioner and having perused the materials placed on record, we are of the view that the order under challenge does not require any interference by this Court. The case of the petitioner before the Rent Control Court was that the tenant produced Ext. B1 (marked as Ext. A1 in the I.A.) as a genuine one and on the basis of that document he argued that the petitioner was not the owner of the tenanted building. The petitioner contended that on the basis of Ext. B1, the Rent Control Court rejected his petition for eviction under Section 11(3) of the Act. The Rent Control Court also found that the title and ownership of the landlord was not proved. It was

to be noted that the production of Ext. B1 may be a reason for rejecting the application for eviction. But that by itself cannot be a reason to initiate proceedings under Section 340 Cr.P.C. Section 340 Cr.P.C. reads as follows:

'Procedure in cases mentioned in Section 195.- (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) sent it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate'.

5. The case of the petitioner is that his petition for eviction was dismissed only on account of the production of Ext. B1. According to him, Ext. B1 is not a genuine document and if such a document is found to be a forged one, then the tenant who produced the said document has committed the offences punishable under Section 465, 468 and 471 IPC. Hence, the Rent Control Court should have proceeded against the respondent -tenant under Section 340 Cr.P.C.

6. The Rent Control Court while considering I.A. No. 917 of 1999 found that there was no reason to proceed against the respondent-tenant under Section 340 Cr.P.C.

7. In the decision reported in Jose Kuruvinakunnel v. Jose, 1997 (1) KLT 150, this Court held as follows:

'If any court is of opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195 which appears to be committed in or in relation to a proceeding in that Court or as the case may be in respect of a document produced or given in evidence in a proceeding in that Court, such court may after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect, make a complaint thereof in writing and sent it to a Magistrate of the First Class having jurisdiction. Therefore, it is within the discretion of the Court when it appears that an offence referred to in Section 195(1)(b) of Cr.P.C. has been committed in a proceeding before the Court, to conduct such preliminary enquiry as it thinks necessary, record a finding to that effect and make a complaint in writing before the competent Magistrate's Court, if it is expedient in the interests of justice'.

In the decision reported in Santokh Singh v. Izhar Hussain, AIR 1973 SC 2190, the Apex Court expressed the following views:

'Every incorrect or false statement does not make it incumbent on the court to order possession. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question or expediency.'

8. In the present case, the Rent Control Appellate Authority held that the finding of the trial court was based on evidence and that the mere production of a document which has not been proved as a forged one, cannot be the basis for ordering prosecution under Section 340 Cr.P.C. The mere statement of the petitioner that Ext. B1 produced by the respondent is forged is not sufficient reason to proceed against him. That apart, as per the provisions of the Code of Criminal Procedure, it is left to the discretion of the Court to initiate proceedings. In this case we are of the view that the discretion was properly exercised by the Court while dismissing I.A. No. 917 of 1999.

9. Hence, the orders under challenge do not warrant any interference by this Court. The Writ Petition is accordingly dismissed.

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